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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 30 1994

In the Matter of) FCC 93-451
)
Amendment of the Commission's) GEN Docket No. 90-314
Rules to Establish New Personal)
Communications Services) RM-7140, RM-7175, RM-7618

To: The Commission

COMMENTS IN SUPPORT OF PETITIONS FOR RECONSIDERATION

The Rural Cellular Association ("RCA")¹, by its attorney and pursuant to Section 1.429 of the Commission's Rules, respectfully submits these Comments in support of two Petitions for Reconsideration filed on July 25, 1994 in response to the Commission's "Memorandum Opinion and Order" in Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket No. 90-314, FCC 93-451 59 Fed. Reg. 32,830 (1993) (June 24, 1994) ("MO&O"). The petitions filed by Cellular Telecommunications Industry Association ("CTIA") and Comcast Corporation ("Comcast") seek less onerous cellular-PCS attribution and geographic overlap rules than those adopted by the Commission in its MO&O. As set forth below, RCA supports these positions as well as its previously requested relief that the Commission exempt cellular carriers associated with rural telephone companies from

¹ RCA is an association comprised of small cellular operators providing service to rural America. RCA's members serve over eighty licensed areas across the country covering approximately 6.5 million in population. The majority of the area served by RCA member companies is rural in nature. RCA member companies are affiliated with rural telephone companies.

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its attribution and geographic overlap rules.²

RCA agrees with CTIA's and Comcast's conclusion that the Commission's current cellular ownership attribution and geographic rules set forth in Section 24.204 of the Commission's Rules need to be modified in order to ensure the full development of Personal Communications Services in all parts of the country, including rural America. In addition to the rule revisions advocated by CTIA and Comcast which include: (1) modifying the attribution standards for PCS cross-ownership to reflect the important differences between equity ownership and control;³ (2) revising the impracticable post-auction divestiture rules to provide adequate time to divest disqualifying interests for all prospective PCS licensees;⁴ and increasing the attribution and overlap thresholds from a 10 percent geographic overlap threshold and a 20% cellular ownership attribution threshold to a 40% geographic overlap threshold and a 30-35% ownership attribution threshold for nondesignated entities;⁵ RCA submits, for the reasons set forth

² See Petition for Reconsideration of the Rural Cellular Association in response to the "Second Report and Order" in Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket No. 90-314, FCC 93-451, filed December 8, 1994. RCA has also intervened on behalf of Cincinnati Bell in Cincinnati Bell Telephone Company v. FCC, Case No. 94-3701 (6th Cir.) in an effort to obtain relief from the FCC's onerous cellular attribution rules.

³ Comcast Petition, pp. 1-7.

⁴ Comcast Petition, pp. 7-9; CTIA Petition, pp. 7-8.

⁵ CTIA Petition, pp. 1-6. RCA notes that the Commission's rules already provides for up to a 40% interest in a cellular entity by a designated entity. See 47 C.F.R § 24.204(d)(2)(ii).

below, that Rule Section 24.204 should be further revised to exempt rural telephone companies from the PCS-cellular ownership attribution and geographic overlap rules.

Rule Section 24.204 is especially onerous when applied to rural telephone companies whose cellular interests cannot possibly be considered to constitute undue market power. In light of the Congressional mandate both to ensure PCS availability in rural areas and to promote the opportunity for rural telephone companies to participate in this new service,⁶ and the acknowledged history of the successful deployment of sophisticated telecommunications services by rural telephone companies, the Commission should permit all rural telephone companies regardless of whether they have attributable cellular interests to provide PCS in their cellular service areas. The record clearly supports elimination of the cellular eligibility standards for rural telephone companies affiliated with cellular licensees. The Commission's established market approach ensures that PCS will be offered on a competitive

⁶ Congress specifically ordered the Commission to award licenses for new technologies, including PCS, in a manner that promotes the following objectives:

- 1) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays; and
- 2) the promotion of accessibility of new technology to the public by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.

See Budget Act, Section 309(j)(3).

basis and that allegations of potential anticompetitive behavior are not supportable. Accordingly, the FCC should exempt rural telephone companies from the cellular attribution rules in order to ensure the availability of PCS in rural areas.

Application of this rule to rural telephone companies is hardly necessary to protect the public from "undue market power." The rule ignores the fact that many rural telephone companies would be disqualified from applying for some PCS spectrum simply because they hold non-controlling interests in cellular licenses. With respect to rural telephone companies that hold controlling interests in cellular licenses, the application will unnecessarily limit the participation in PCS by committed rural service providers in contrast to the Congressional mandate. In all likelihood, it will be difficult at best for a rural telephone company to participate in the competitive bidding process alone. To participate successfully in the competitive bidding process, rural telephone companies may need to pool their resources by forming consortia much like the wireline cellular settlement groups which assured the viability of cellular service in the Rural Service Areas. Because the attributable cellular interests of each company are added together,⁷ rural telcos attempting to work together may likely exceed the cellular attribution limit and will be disqualified from participation.

⁷ See Second Report and Order, GEN Docket No. 90-314, 8 FCC Rcd 7700, 7746, fn 93.

RCA submits that the Commission's positive experience with the rapid and efficient provision of cellular radio service by rural telephone companies attests to the validity of awarding special consideration in the instant proceeding. The FCC's asserted rationalization for broadly applying its attribution rules to rural telephone companies is that "exempting designated entities entirely from the cellular eligibility rules . . . could foreclose from competition from [sic] a new PCS entrant."⁸ This rationalization does not provide a sustainable basis to implement a general denial of entry opportunities to rural telephone companies -- a group whose participation Congress specifically directed the Commission to encourage.⁹

The PCS licensing mechanism adopted by the Commission guarantees a minimum of three, and affords the possibility of six, PCS licensees for any given geographic area. This competitive framework will ensure that market forces protect the public interest.

To the extent that these restrictions may produce any public interest benefit, such benefit will not outweigh the detriment which would result from the application of the restrictions to rural telephone companies. In light of the clear directive that

⁸ MO&O para. 125.

⁹ In its Second Memorandum Opinion and Order, in PP Docket No. 93-253, In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, released August 15, 1994, the Commission revised its definition of rural telephone company to include any local exchange carrier, including affiliates (as defined in 1.2110(b)(4), with 100,000 access lines or fewer. 47 C.F.R § 1.2110(b)(3)

licenses be disseminated to rural telephone companies, a rule that renders rural telephone companies with attributable cellular interests ineligible even to compete for a PCS license is insupportable. Entities which qualify as "rural telephone companies" for the purpose of PCS preference eligibility should not be frustrated in their attempt to continue their commitment to bring new technologies to rural America simply because of their prior record of fulfillment of their commitment to rural America. Accordingly, because the Commission's application of these cellular attribution rules will severely limit the availability of PCS to those living in rural America in contravention of the Congressional mandate, the Commission should modify its attribution rules to exempt rural telephone companies from any cellular ownership restrictions.


CONCLUSION

Congress has explicitly defined the public interest as requiring special regard to and accommodation of the needs of rural America. It has recognized the desirability of fostering participation by rural telephone companies in the provision of PCS. The RCA, therefore, respectfully submits that adherence to the Congressional mandate through the modification of the rules as proposed herein will serve the public interest.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

By:



Caressa D. Bennet,
Regulatory Counsel

2120 L Street, N.W., Suite 520
Washington, D.C. 20037
(202) 319-7667

Dated: August 30, 1994

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Comments in Support of Petitions for Reconsideration" was mailed via first-class U.S. mail, postage prepaid, on August 30, 1994 to the following:

* indicates hand delivery

Chairman Reed Hundt *
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554

Commissioner Andrew C. Barrett *
Federal Communications Commission
1919 M Street, NW, Room 826
Washington, DC 20554

Commissioner Rachelle Chong *
Federal Communications Commission
1919 M Street, NW, Room 844
Washington, DC 20554

Commissioner Susan Ness *
Federal Communications Commission
1919 M Street, NW, Room 832
Washington, DC 20554

Commissioner James H. Quello *
Federal Communications Commission
1919 M Street, NW, Room 802
Washington, DC 20554

Karen Brinkmann, Special Assistant *
Office of Chairman Reed Hundt
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, D.C. 20554

Rudolfo M. Baca, Acting Legal Advisor *
Office of Commissioner James H. Quello
Federal Communications Commission
1919 M Street, NW, Room 802
Washington, DC 20554

Byron F. Marchant, Senior Legal Advisor *
Office of Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, NW, Room 826
Washington, DC 20554

Richard K. Welch, Legal Advisor *
Office of Commissioner Chong
Federal Communications Commission
1919 M Street, NW, Room 844
Washington, DC 20554

Gregory J. Vogt, Legal Advisor *
Office of Commissioner Ness
Federal Communications Commission
1919 M Street, NW, Room 832
Washington, DC 20554

Mr. John Cimko, Jr., Chief *
Mobile Services Division
Federal Communications Commission
1919 M Street, NW, Room 644
Washington, DC 20554

William E. Kennard, General Counsel *
Office of General Counsel
Federal Communications Commission
1919 M Street, NW, Room 614
Washington, DC 20554

Mr. Donald Gips, Deputy Chief *
Office of Plans and Policy
Federal Communications Commission
1919 M Street, NW, Room 822
Washington, DC 20554

Mr. Jonathan Cohen, Esquire
Office of Plans and Policy
Federal Communications Commission
1919 M Street, NW, Room 822
Washington, DC 20554

Ralph Haller, Chief *
Private Radio Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554

International Transcription Services *
Federal Communications Commission
1919 M Street, NW, Room 246
Washington, DC 20554

Leonard J. Kennedy, Esquire
Richard S. Denning, Esquire
Dow, Lohnes & Albertson
1255 23rd Street, NW
Washington, DC 20037

Counsel for
COMCAST CORPORATION
Michael F. Altschul
Vice President, General Counsel
Cellular Telecommunications Industry Association
1250 Connecticut Avenue, NW Suite 200
Washington, DC 20036

Phillip L. Verveer
Laurence D. Atlas
Jennifer A. Donaldson
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384
Counsel for
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Benjamin H. Dickens, Jr., Esquire
John A. Prendergast, Esquire
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, NW Suite 300
Washington, DC 20037
Counsel for
SOUTH DAKOTA NETWORK, INC.

David Cosson, Esquire
L. Marie Guillory, Esquire
2626 Pennsylvania Avenue, NW
Washington, DC 20037
Counsel for
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

Stephen G. Kraskin, Esquire
Sylvia Lesse, Esquire
Charles Cosson, Esquire
Kraskin & Associates
2120 L Street, NW
Washington, DC 20037
Counsel for
U.S. INTELCO NETWORKS, INC.

Lisa M. Zaina, Esquire
Mr. Ken Johnson
OPASTCO
21 Dupont Circle, NW, Suite 700
Washington, DC 20036

Frank W. Krogh
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

Douglas E. Hart
Frost & Jacobs
201 E. Fifth Street
Suite 2500 PNC Center, P.O. Box 5715
Cincinnati, OH 45202

John E. Ingle
Office of the General Counsel
Federal Communications Commission
1919 M Street, N.W. Suite 602
Washington, DC 20554

James M. Carr
Office of the General Counsel
Federal Communications Commission
1919 M Street, N.W. Suite 602
Washington, DC 20554

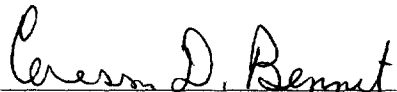
Robert J. Wiggers
U.S. Department of Justice
Antitrust Division
Ninth & Pennsylvania Avenue, N.W.
Washington, DC 20530

Linda Kent
United States Telephone Association
1401 H Street, N.W. Suite 600
Washington, DC 20005

Jeffrey B. Thomas
Pacific Bell
140 New Montgomery Street Suite 1522A
San Francisco, CA 94105

Robert H. McKenna
1020 19th Street, N.W. Suite 700
Washington, DC 20036

William B. Barfield
1155 Peachtree Street, N.E. Suite 1800
Atlanta, GA 30367-6000


C. D. Bennett